

Message Text

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SUBJ: KENYA ENACTS CAPITAL GAINS TAX

SUMMARY: KENYAN PARLIAMENT PASSED INCOME TAX (AMENDMENT)
BILL APRIL 20 WHICH INCLUDES PROVISIONS FOR CAPITAL GAINS
TAX ALONG WITH MISCELLANEOUS AMENDMENTS TO INCOME TAX ACT
OF 1973. NEW BILL HAS EFFECT FROM JUNE 13, 1975.

2. CAPITAL GAINS SECTION (SCHEDULE 8), INSTITUTES TAX ON
GAINS REALIZED FROM TRANSFERS OF BOTH PROPERTY AND
INVESTMENT SHARES. FORMER INCURS TAX RATE OF 10 PERCENT
AND LATTER 35 PERCENT ON GROSS AMOUNT OR AGGREGATE COMPEN-
SATION OF TRANSACTION.

3. TRANSFER OF PROPERTY: BY TERM TRANSFER, ACT INCLUDES
PROPERTY EXCHANGED OR DISPENSED OF IN ANY MATTER REGARDLES
OF WHETHER REMUNERATION RECEIVED BY TRANSFEROR. ALSO IN-
CLUDED IN DEFINITION IS LOSS, DESTRUCTION, OR
EXTINCTION OF PROPERTY FOR WHICH INSURANCE PAYMENT IS RECEIVED,
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EXCEPT IN CASES WHERE COMPENSATION IS UTILIZED TO REIN-
STATE PROPERTY WITHIN ONE YEAR. GAIN IS COMPUTED AS

AMOUNT BY WHICH TRANSFER VALUE EXCEEDS ADJUSTED COST OF PROPERTY.

4. NOT CONSIDERED PROPERTY TRANSFER FOR PURPOSES OF TAX ARE TRANSFERS TO PROVIDE LOAN SECURITY AND ISSUANCE OF DEBENTURES BY A COMPANY.

5. EXEMPT FROM CAPITAL GAINS TAXATION ARE CERTAIN TRANSFERS OF PRIVATE RESIDENCES, MOTOR VEHICLE SALES, AGRICULTURAL LAND IN RURAL AREAS, AND PLOTS OF A MINIMUM SIZE.

6. GAINS REALIZED ON TRANSFER OF PROPERTY WHICH WAS ACQUIRED BEFORE JANUARY 1, 1975 AND TRANSFERRED BEFORE JANUARY 1, 1985 ENJOY PERCENTAGE REDUCTION BASED ON YEAR OF ACQUISITION. ALL ELIGIBLE PROPERTY SITUATED IN KENYA AND TRANSFERRED ON OR AFTER JANUARY 1, 1975 (IN CASE OF A COMPANY) AND ON OR AFTER JUNE 13, 1975 (IN CASE OF AN INDIVIDUAL) IS TAXABLE.

7. TRANSFER OF INVESTMENT SHARES: TERM INVESTMENT SHARES REFERS TO SUCH SHARES OF COMPANIES, MUNICIPAL OR GOVERNMENTAL AUTHORITIES, OR ANY BODY CREATED BY SUCH AUTHORITIES AS ARE LISTED IN AND TRADED ON NAIROBI STOCK EXCHANGE.

GAIN, AS IN CASE OF PROPERTY, IS DEFINED AS AMOUNT BY WHICH TRANSFER VALUE EXCEEDS ADJUSTED COST OF SHARES. SHARE TRANSFERS BY PUBLIC INTEREST ASSOCIATIONS AND TRANSFERS IN CONNECTION WITH REGISTERED PENSION FUNDS, TRUST SCHEMES, OR PROVIDENT FUNDS ARE EXEMPTED FROM CAPITAL GAINS TAXATION.

8. COMMENT: INTRODUCED TWICE IN 1975 (CAPITAL GAINS TAX BILL OF JUNE 12 AND INCOME TAX AMENDMENT BILL OF DEC. 5), CONCEPT OF CAPITAL GAINS HAS BEEN SUBJECT OF VIGOROUS DEBATE IN PARLIAMENT AND BUSINESS COMMUNITY. IDEA APPEALED NEITHER TO SMALL ENTREPRENEURIAL GROUP NOR TO MUCH LARGER AFRICAN FARMER POPULATION. FORMER PREDICTED DEPRESSING EFFECT ON KENYA'S ALREADY SLUGGISH INDUSTRIAL ACTIVITY, WHILE WANANCHI SUSPECTED TAX WOULD
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DEPRIVE AFRICANS OF CHERISHED FARM FREEHOLDS -- THE GOAL OF KENYA'S INDEPENDENCE MOVEMENT. STOCK MARKET, HOWEVER, HAS SURVIVED LAST TEN MONTHS EVEN UNDER THREAT OF NEW TAX, WHILE POTENTIAL RURAL LANDOWNERS WERE MOLLIFIED BY ACT'S EXEMPTIONS.

9. SILLFUL DEFENSE ON PART OF INMIN KIBAKI AND TREASURY COLLEAGUES MANEUVERED LATEST BILL THROUGH PARLIAMENT. IN WAKE OF TREASURY CRACKDOWN ON WIDENING BUDGET DEFICIT, TAX MEASURE OFFERED SOME IMPROVEMENT

IN GOVERNMENT REVENUES. CAPITAL GAINS TAXATION
CONTRIBUTED TO FINMIN'S INCOME REDISTRIBUTION
PROGRAM, PROMINENT GOAL IN 1975 BUDGET MESSAGE AND
COMMITMENT TO IMF.
MARSHALL

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